

1 to intervene referred just to a case 792.

2 JUDGE WOODS: Okay.

3 MR. STREETER: And, as I said before, I did
4 that because they were consolidated. You
5 unconsolidated them.

6 JUDGE WOODS: Now we're back together again,
7 aren't we?

8 MR. STREETER: Now we're back together again.

9 JUDGE WOODS: It's kind of like a waltz, isn't
10 it?

11 MR. STREETER: You previously asked me to file
12 a separate one, so my question is do I need to do
13 that or does this suffice?

14 JUDGE WOODS: My understanding of an actual
15 form of pleading is that if a document is being
16 filed in the consolidate dockets, the caption
17 should bear both dockets and show the dockets as
18 being consolidated. So if you wish to refile, I
19 would not find that that's untimely at this time.

20 MR. STREETER: All right.

21 JUDGE WOODS: It's a matter of correcting a
22 scrivener's error.

1 MR. STREETER: Thank you.

2 MR. KERNAN: Judge, are we clear that with
3 respect to the intervention or the motion on the
4 confidential treatment then, will there be time to
5 respond to those, based on your earlier discussions
6 today?

7 JUDGE WOODS: No. That briefing schedule has
8 been eliminated, and I've ruled on that.
9 Intervention is granted in the confidential
10 treatment application.

11 Okay. Anything further?

12 MS. VON QUALEN: I have a question.

13 JUDGE WOODS: Okay.

14 MS. VON QUALEN: Procedurally, since we have
15 intervenors in a portion of this consolidated
16 docket but we do not have intervenors in the other
17 portion of the consolidated docket, when Staff
18 sends out data requests which apply only to the
19 16-111(g) filing, would we -- I would assume we
20 would not need to serve those on the parties that
21 have not been granted intervention.

22 JUDGE WOODS: I don't think that would be a

1 requirement, but it would certainly be a courtesy
2 if you wish to do so.

3 MS. VON QUALEN: Okay. Thank you.

4 MR. KUHN: Similarly with responses.

5 JUDGE WOODS: And similarly with responses,
6 yes.

7 Okay. Is there anything further at this
8 time? Okay. We'll continue this cause then to
9 January 18, 2002, beginning at 10:00 A.M. for the
10 cross-examination of the witnesses.

11 (Whereupon the case was
12 continued to January 18,
13 2002, at 10:00 A.M. in
14 Springfield, Illinois.)
15
16
17
18
19
20
21
22

1 STATE OF ILLINOIS)
2) SS
3 COUNTY OF SANGAMON)
4 CASE NO.: 01-0785 & 01-0792 CONSOLIDATED
5 TITLE: CENTRAL ILLINOIS LIGHT COMPANY
6 ILLINOIS COMMERCE COMMISSION
7 On Its Own Motion
8 -vs-
9 CENTRAL ILLINOIS LIGHT COMPANY
10

11 CERTIFICATE OF REPORTER

12 I, Cheryl A. Davis, do hereby certify that I
13 am a court reporter contracted by Sullivan
14 Reporting Company of Chicago, Illinois; that I
15 reported in shorthand the evidence taken and
16 proceedings had on the hearing on the
17 above-entitled case on the 17th day of December,
18 2001; that the foregoing pages are a true and
19 correct transcript of my shorthand notes so taken
20 as aforesaid and contain all of the proceedings
21 directed by the Commission or other persons
22 authorized by it to conduct the said hearing to be
so stenographically reported.

Dated at Springfield, Illinois, on this 17th
day of December, A.D., 2001.

Certified Shorthand Reporter
License No. 084-001662

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

**Illinois Commerce Commission
On its Own Motion**

-vs-

Central Illinois Light Company

01-0792

**Proceeding pursuant to Section 16-
111(g) of the Public Utilities Act
concerning proposed transfer of
generation assets to a subsidiary and
entry into related agreements.**

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 51'S
PETITION FOR INTERLOCUTORY REVIEW OF ADMINISTRATIVE LAW JUDGE'S
DENIAL OF LOCAL 51'S PETITION TO INTERVENE**

Comes now INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 51 ("Local 51"), and, pursuant to Section 200.520 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), requests review of the Administrative Law Judge's December 17, 2001 decision denying Local 51's Petition to Intervene. In support, Local 51 states:

FACTS

On November 20, 2001, pursuant to Section 16-111(g) of the Electric Service Customer Choice and Rate Relief Law of 1997 (the "Act"), 220 ILCS. 5/16-111(g)(vi), Central Illinois Light Company ("CILCO") filed a Notice of Transfer of Electrical Generation Assets with the Commission. CILCO proposed to transfer all of its generation assets to

Central Illinois Generation Inc. ("CIGI"), a wholly-owned subsidiary, while keeping its transmission and distribution operations.¹ To facilitate the transfer, CILCO and CIGI have agreed that CILCO will purchase all of its energy requirements from CIGI through 2004. (CILCO's Not. of Transfer at 8-9.) Under a Power Supply Agreement ("PSA" - filed as Appendix with CILCO's Notice of Transfer), CILCO will pay CIGI the cost of its energy requirements - the Capacity Charge - plus an additional \$17.05 per megawatt hour - the "Energy Charge." (App. C to CILCO's Not. of Transfer at Section 6.1.)

Further, the PSA's unique "force majeure" clause limits CIGI's liability even when it fails to provide power due to its own equipment failure. (App. C to CILCO's Not. of Transfer at Section 9.1.) The PSA bars CILCO from seeking power on its own from other sources in such instances. The clause requires CILCO to purchase its power at "market rates" from CIGI and to continue paying CIGI the \$17.05 per mega watt hour Energy Charge. (App. C to CILCO's Not. of Transfer at Section 9.2.) In short the new CILCO, formerly the old CILCO's Transmission and Distribution Departments, would bear most or all of the risk of permitting the new CIGI, formerly the old CILCO's Generation Department, to change to a new market energy producer and supplier.

On December 14, 2001, Local 51 filed a Petition to Intervene in the above-described case. Local 51 is the collective bargaining representative of all non-supervisory employees currently working in CILCO's transmission and distribution departments. On

¹ At the present time, CILCO, including both its generation and transmission and distribution divisions, is a subsidiary of AES Corporation which is required by federal regulations to divest itself of CILCO due to its purchase of Indianapolis Power and Light Co., a utility in a state neighboring Illinois.

December 17, 2001, the Administrative Law Judge ("ALJ") denied the Petition, stating that Section 16-111(g)'s intervention provision is very limited. The ALJ held that Local 51 may intervene at a later point in the event that CILCO later requests a rate increase, but that it could only participate in the present proceedings through a statutory consumer protection agency.

ARGUMENT

Section 16-111(g)(vi) of the Act provides that "intervention shall be limited to parties with a *direct interest in the transaction which is the subject of the hearing* and any statutory consumer protection agency as defined in subsection (d) of Section 9-102.1." 220 Ill. Comp. Stat. 5/16-111(g)(vi) (emphasis supplied). The Commission may only prohibit the proposed transaction if it determines "(1) that the proposed transaction will render the electric utility unable to provide its tariffed services in a safe and reliable manner, or (2) that there is a strong likelihood that consummation of the proposed transaction will result in the electric utility being entitled to request an increase in its base rates during the mandatory transition period pursuant to subsection (d) of this Section." *Id.*

Local 51 has "a direct interest" in this transaction. After reviewing CILCO's and CIGI's proposed Asset Transfer and Power Supply Agreement, Local 51 believes that the proposed asset transfer places an undue burden on CILCO while placing little or no risk on CIGI. Further, Local 51 believes that the total cost of energy that the new CILCO will have to pay for is inflated. As a result, CILCO could well become a shell of its former self, and many Local 51 members could lose their jobs or, to save the New CILCO from bankruptcy, be required to make terms and conditions of employment concessions. In such an event,

Groups such as the Citizens Utility Board ("CUB"), a statutory consumer protection agency, represent ratepayers, who are most concerned with being provided reliable service and reasonable rates. But, CUB does not have a mission to protect the job security of utility and working conditions of utility employees such as Local 51's members. It cannot, then, adequately protect their interests. Only CILCO's employees, in this case through their union, Local 51, can protect those interests. By allowing consumer groups to intervene in transfer hearings, the legislature clearly hoped that consumers' concerns over reliability and rates - these public interests - would be fully vetted by the Commission. Accordingly, by allowing other parties the right to intervene in these hearings, the Legislature recognized that there were other types of interests, private interests, not represented by the transaction participants or CUB, that also deserved a full airing before the Commission.

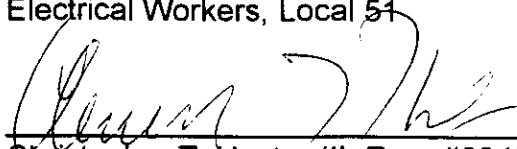
CILCO argued that the representative of the transferred employees, the generation employees, are the only employees who can intervene. Local 51 agrees the generation employees may intervene. But, that is not the end. In *Commonwealth Edison*, the Hearing Examiners concluded that "direct interest intervention is accorded solely to parties whose legally cognizable rights and interests would be directly affected by consummation of the subject transaction." In that case, Local 15, IBEW petitioned to intervene in a hearing dealing with ComEd's proposed sale of its generating plants. Based on Section 16-128(c) and (d) of the Act, which requires a successor employer of an existing utility to continue to employ the former utility's generating employees under the same terms and conditions of employment as those employees used to enjoy, the Commission granted

Local 15's intervention petition. The Hearing Examiners believed that Local 15's rights under Section 16-128 would be directly affected by the sale and permitted Local 15 to intervene to protect its members' terms and conditions of employment.

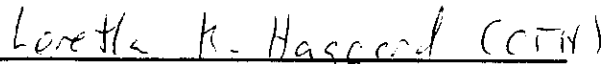
There is no doubt that Section 16-128 affords transferred employees extra protection. But, surely, the Public Utilities Act does not leave the employees of the remaining entity hung out to dry. While Section 16-128 was inserted into the Act to ensure a bottom line protection that transferred employees' "terms and conditions" of employment would be protected at least through the mandatory transition period, the remaining employees also need protection, not as successor employees, but in their remainder status. The Legislature accomplished this by the language of Section 16-111(g)(vi) which gives the remaining employees the right, through their union in this case, to bring information to the Commission about the transaction that could have a direct impact on the stability of the entity employing them. Section 16-111(g)(vi) makes it clear that the Legislature intends the remaining entity should provide service in a safe and reliable manner without coming hat in hand to the Commission for rate increases. To test this issue, Section 16-111 (g) (vi) allows third parties with a direct interest in the outcome of a transfer of assets, such as employees of the remaining employer, to intervene.

In the hearing, CILCO cited to two cases in support of its position: *Egyptian Electric Cooperative Ass'n v. ICC*, 33 Ill. 2d 339, 211 N.E.2d 238 (1965) and *WPS Energy Services, Inc.*, Case 00-0199 (March 16, 2001) (ICC decision). In the former case, the court upheld the Commission's denial of intervention because the appellant had presented

Respectfully submitted,
SCHUCHAT COOK & WERNER
Attorneys for International Brotherhood
Electrical Workers, Local 51



Christopher T. Hexter (IL Reg. #6242379)



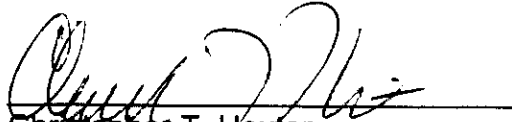
Loretta K. Haggard (IL Reg. #6239448)

The Shell Building, 2nd Floor
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Ex. B to CILCO's Objection to IBEW's Petition for Interlocutory Review

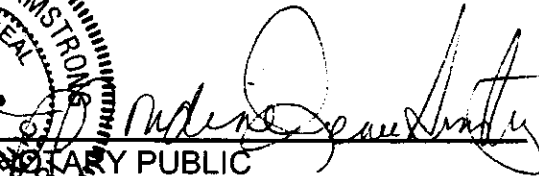
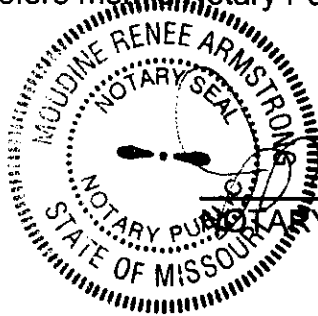
STATE OF MISSOURI :
:
CITY OF ST. LOUIS:

Christopher T. Hexter, being duly sworn, deposes and says that he is one of the practicing attorneys in the law firm of Schuchat, Cook & Werner and one of the attorneys for International Brotherhood of Electrical Workers, Local 51, and that he is duly authorized to execute this Petition for Interlocutory Review, that he has read the above and foregoing document, has knowledge of the facts stated therein and herewith states that the matters set forth therein are true in substance and in fact.



Christopher T. Hexter
Schuchat, Cook & Werner
1221 Locust St. 2nd Floor
St. Louis, MO 63103-2364
314-621-2626

Subscribed and sworn to before me, a Notary Public, on this 19th day of December, 2001.



MOUDINE RENEE ARMSTRONG
Notary Public - State of Missouri
County of St. Louis
Commission Expires September 24, 2004

VERIFICATION OF SERVICE

Undersigned hereby verifies that he served an original of this Petition for Interlocutory Appeal was served upon Donna M. Caton, Chief Clerk of the Illinois Commerce Commission, 527 E. Capitol Ave., Springfield, IL 62701 by the Commission's E-mail System, by the United States Postal Service, first class mail, postage prepaid, and upon the below mentioned parties to this proceeding by facsimile and the United States Postal Service, first class mail, postage prepaid this 19th day of December, 2001:

Mark J. McGuire
Michael E. Kernan
William L. Kuhn
Attorneys for CILCO
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611

Robert Sprowls
Nick T. Shea
Central Illinois Light Company
300 Liberty Street
Peoria, IL 61602

Tom Bramschreiber
AES Great Plains
1901 Burtterfield Road, Suite 650
Downers Grove, IL 60515

Patrick Foster
Office of General Counsel
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701

Dominic Rivara
Business Manager
IBEW Local 51
301 E. Spruce St.
Springfield, IL 62703



Christopher T. Hexter

Ex. C to CILCO's Objection to IBEW's Petition for Interlocutory Review

SCHUCHAT, COOK & WERNER

1221 Locust Street
St. Louis, Missouri 63103Facsimile Number: (314) 621-2378
Telephone Number: (314) 621-2626

TO:	ORGANIZATION:	FAX NO:
William Kuhn Michael E. Kernan Mark McGuire	Jenner &Block	(312) 527-0484

FROM:	RE:	DATE:
Moudine Armstrong	Local 51 Petition for Interlocutory Review of Administrative Law Judges' Denial of Local 51's Petition to Intervene	December 20, 2001

CLIENT/MATTER:

NUMBER OF PAGES

(Excluding Cover Page)

Local 51/CILCO

15/3

MESSAGE:

Gentlemen:

I overnighted this via UPS on December 19, 2001 to all parties of record. I have also attached a copy of the UPS form that shows that the document went out on December 19th. Because of the importance of the document I am faxing a copy of which was mailed to you via overnight. If you should have any questions please do not hesitate to give Chris Hexter a call.

Sincerely,

Moudine

Ex. C to CILCO's Objection to IBEW's Petition for Interlocutory Review
LAW OFFICESSTANLEY R. SCHUCHAT
(1914 - 1979)JAMES K. COOK
CHARLES A. WERNER
CHRISTOPHER T. HEXTER*
MARILYN S. TENENBAUM
JAMES I. SINGER*
SALLY E. BARNER
ARTHUR J. MARTIN*
DEAN L. CHRISTIANSON*
RHONDA S. LYONS
LORETTA K. HAGGARD*
STACEY A. MEYERS*
FAIR M. MELARSCHUCHAT, COOK & WERNER
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Marion, Illinois 62959
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Fax: (618) 998-9447

*also licensed in Illinois

December 19, 2001

Donna M. Caton
Chief Clerk
Illinois Commerce Commission,
527 E. Capitol Ave.
Springfield, IL 62701

Re: Case No. 01-01792

Dear Ms. Caton:

Enclosed is an original and one copy of Local 51's Petition to Intervene in the above mentioned case, a Verification of my signature on the Petition and Verification of Service which I am mailing to you by IPS Overnight Mail. At this time, I am also filing a Verification of my signature on Local 51's Petition to Intervene in the above mentioned proceeding that I had mailed by Priority Mail to you on Friday, December 14, 2001 and a Verification of Service of that document as well. As you can see by the Verifications of Service, copies of these documents have been served by UPS Overnight Mail on all parties known to be participating in the above mentioned case. I am also sending copies of these documents to all parties in this case by facsimile. Would you please file stamp the copies of the documents I have enclosed and return them to me in the enclosed, stamped addressed envelope. Thank you in advance for your prompt attention to this matter.

Sincerely,


Christopher T. HexterCTH:ms
cc: All parties of record

190430.WPD

Ex. C to CILCO's Objection to IBEW's Petition for Interlocutory Review

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission
On its Own Motion

-vs-

Central Illinois Light Company

01-0792

Proceeding pursuant to Section 16-
111(g) of the Public Utilities Act
concerning proposed transfer of
generation assets to a subsidiary and
entry into related agreements.

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PETITION FOR INTERLOCUTORY REVIEW OF ADMINISTRATIVE LAW JUDGE'S
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Ex. C to CILCO's Objection to IBEW's Petition for Interlocutory Review

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Ex. C to CILCO's Objection to IBEW's Petition for Interlocutory Review

December 17, 2001, the Administrative Law Judge ("ALJ") denied the Petition, stating that Section 16-111(g)'s intervention provision is very limited. The ALJ held that Local 51 may intervene at a later point in the event that CILCO later requests a rate increase, but that it could only participate in the present proceedings through a statutory consumer protection agency.

ARGUMENT

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Ex. C to CILCO's Objection to IBEW's Petition for Interlocutory Review

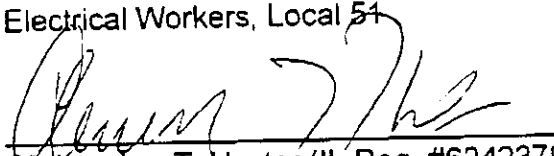
Local 15's intervention petition. The Hearing Examiners believed that Local 15's rights under Section 16-128 would be directly affected by the sale and permitted Local 15 to intervene to protect its members' terms and conditions of employment.

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Ex. C to CILCO's Objection to IBEW's Petition for Interlocutory Review

Respectfully submitted,
SCHUCHAT COOK & WERNER
Attorneys for International Brotherhood
Electrical Workers, Local 51


Christopher T. Hexter (IL Reg. #6242379)

Loretta K. Haggard (CTH)
Loretta K. Haggard (IL Reg. #6239448)
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lkh@schuchatacw.co

190380.WPD

Ex. C to CILCO's Objection to IBEW's Petition for Interlocutory Review

STATE OF MISSOURI :

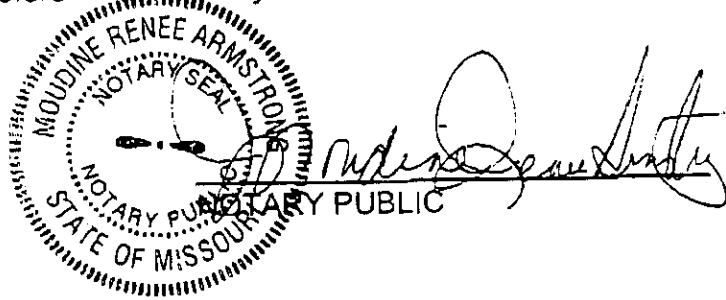
CITY OF ST. LOUIS:

Christopher T. Hexter, being duly sworn, deposes and says that he is one of the practicing attorneys in the law firm of Schuchat, Cook & Werner and one of the attorneys for International Brotherhood of Electrical Workers, Local 51, and that he is duly authorized to execute this Petition for Interlocutory Review, that he has read the above and foregoing document, has knowledge of the facts stated therein and herewith states that the matters set forth therein are true in substance and in fact.



Christopher T. Hexter
Schuchat, Cook & Werner
1221 Locust St. 2nd Floor
St. Louis, MO 63103-2364
314-621-2626

Subscribed and sworn to before me, a Notary Public, on this 19th day of December, 2001.



MOUDINE RENEE ARMSTRONG
Notary Public - State of Missouri
County of St. Louis
My Commission Expires September 24, 2004

190432.WPD

Ex. C to CILCO's Objection to IBEW's Petition for Interlocutory Review

VERIFICATION OF SERVICE

Undersigned hereby verifies that he served an original of this Petition for Interlocutory Appeal was served upon Donna M. Caton, Chief Clerk of the Illinois Commerce Commission, 527 E. Capitol Ave., Springfield, IL 62701 by the Commission's E-mail System, by the United States Postal Service, first class mail, postage prepaid, and upon the below mentioned parties to this proceeding by facsimile and the United States Postal Service, first class mail, postage prepaid this 19th day of December, 2001:


Mark J. McGuire
Michael E. Kernan
William L. Kuhn
Attorneys for CILCO
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611

Robert Sprowls
Nick T. Shea
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Illinois Commerce Commission
527 E. Capitol Ave.
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Dominic Rivara
Business Manager
IBEW Local 51
301 E. Spruce St.
Springfield, IL 62703


Christopher T. Hexter

190431.WPD

Ex. C to CILCO's Objection to IBEW's Petition for Interlocutory Review

STATE OF MISSOURI :


CITY OF ST. LOUIS:

Christopher T. Hexter, being duly sworn, deposes and says that he is one of the practicing attorneys in the law firm of Schuchat, Cook & Werner and one of the attorneys for International Brotherhood of Electrical Workers, Local 51, and that he is duly authorized to execute this Petition to Intervene, that he has read the above and foregoing document, has knowledge of the facts stated therein and herewith states that the matters set forth therein are true in substance and in fact.



Christopher T. Hexter
Schuchat, Cook & Werner
1221 Locust St. 2nd Floor
St. Louis, MO 63103-2364
314-621-2626

Subscribed and sworn to before me a Notary Public, on this 19th day of December, 2001.


NOTARY PUBLIC

MOUDINE RENEE ARMSTRONG
Notary Public - State of Missouri
County of St. Louis

190434.WPD My Commission Expires September 24, 2004

Ex. C to CILCO's Objection to IBEW's Petition for Interlocutory Review

VERIFICATION OF SERVICE

Undersigned hereby verifies that he served an original of a Verification of his Signature on the Petition to Intervene upon Donna M. Caton, Chief Clerk of the Illinois Commerce Commission, 527 E. Capitol Ave., Springfield, IL 62701 by UPS Overnight Mail and by facsimile and upon the below mentioned parties to this proceeding by UPS Overnight Mail and facsimile this 19th day of December, 2001:

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Illinois Commerce Commission
527 E. Capitol Ave.
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Business Manager
IBEW Local 51
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Springfield, IL 62703



Christopher T. Hexter

190436.WPD

Ex. C to CILCO's Objection to IBEW's Petition for Interlocutory Review

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

WPS Energy Services, Inc. :
 :
 : Docket No. 00-0199
Petition for certification as an :
alternative retail electric supplier. :

ORDER REOPENING PROCEEDING

On March 2, 2000, WPS Energy Services, Inc. ("WPS"), filed an Application with the Commission requesting that it be granted a certificate of service authority in order to become an alternative retail electric supplier ("ARES") in Illinois, pursuant to Section 16-115 of the Public Utilities Act ("Act") (220 ILCS 5/16-115) and 83 Ill. Adm. Code 451. The Commission, based upon its consideration of the verified Application and of verified information provided in response to a request from the Hearing Examiner in that proceeding ("Response"), entered an Order in Docket No. 00-0199, on April 18, 2000, granting WPS authority to operate as an ARES by selling electricity and power to nonresidential retail customers with total maximum electric demand of 1MW or more, within the service territories of Commonwealth Edison Company, Central Illinois Public Service Company, Illinois Power Company, and Central Illinois Light Company.

Upon review of its Order, the Commission is concerned that it may have erred in construing Section 16-115 of the Act, and that its construction of the law in two important respects may have erroneously limited the facts it considered in Docket No. 00-0199. A discussion of these concerns follows.

Section 16-115(d)(5)

Section 16-115 of the Act provides for the certification of alternative retail electric suppliers, and reads in part as follows:

(d) The Commission shall grant the application for a certificate of service authority if it makes the findings set forth in this subsection based on the verified application and such other information as the applicant may submit:

* * * * *

(5) That if the applicant, its corporate affiliates or the applicant's principal source of electricity (to the extent such source is known at the time of the application) owns or controls facilities, for public use, for the transmission or distribution of electricity to end-users *within a defined geographic area to which electric power and energy can be physically and*

economically delivered by the electric utility or utilities in whose service area or areas the proposed service will be offered, the applicant, its corporate affiliates or principal source of electricity, as the case may be, provides delivery services to the electric utility or utilities in whose service area or areas the proposed service will be offered that are reasonably comparable to those offered by the electric utility, and provided further, that the applicant agrees to certify annually to the Commission that it is continuing to provide such delivery services and that it has not knowingly assisted any person or entity to avoid the requirements of this Section. For purposes of this subparagraph, "principal source of electricity" shall mean a single source that supplies at least 65% of the applicant's electric power and energy, and the purchase of transmission and distribution services pursuant to a filed tariff under the jurisdiction of the Federal Energy Regulatory Commission or a state public utility commission shall not constitute control of access to the provider's transmission and distribution facilities[.]

[220 ILCS 5/16-115(d)(5) (emphasis supplied)]

The Commission's Order implicitly adopted a construction of Section 16-115(d)(5), and particularly the language highlighted above, which is consistent with the construction urged by WPS in its Reply to Commonwealth Edison Company's Comments on Application ("Reply"), which was filed with the Commission on April 18, 2000. The Reply states, in paragraph 4, that "[i]t would be ironic indeed if the Commission were to interpret Section 16-115(d) in a fashion that would suggest that the 'electric power and energy' to be 'physically and economically delivered' was electric power and energy generated in a state other than the State of Illinois by generating assets upon which electric utilities in Illinois were never authorized to earn a return."

Paragraph 6 of the Reply asserts that such an interpretation "would render meaningless the exemption placed in the reciprocity clause," and that if such an "interpretation was correct there would be no need for an exemption based on the ability to physically and economically deliver electricity since no one would ever be able to show that power could not be purchased at wholesale within a service area in the state and physically delivered to end-use customers in the subject service area at a retail price."

The Commission is concerned that there may in fact be another reading of the language highlighted above that is more directly in line with the intent of the Illinois General Assembly. In this light, it is important to remember that the primary means for any prospective ARES to satisfy the reciprocity test is simply to offer delivery services within its service area which are reasonably comparable to those required of electric utilities under Article XVI of the Act. Given this fact, it is reasonable to believe that the General Assembly's overall intent in enacting Section 16-115(d)(5) was to ensure that

any entity which availed itself of the newly created business opportunities provides for the creation of similar opportunities to those it enjoys under the new law.

The General Assembly may well have believed that a business entity which is affiliated with an electric public utility should not be allowed to purchase delivery services for electric power and energy, irrespective of where the electricity was initially generated, unless the business entity's retail affiliate (or nominally non-affiliated utility for whom the business entity served as a retail sales conduit) made delivery services available over which electric power and energy (once again, irrespective of where the electricity was generated) could be delivered by third parties to the electric utility's retail customers. The reciprocity requirement might thus properly apply in all instances except those involving an affiliate of a utility which exclusively serves an area on a vertically integrated basis in which either no wholesale market exists, or in which such a market may exist but to which power and energy cannot be economically delivered for one or more reasons.

Consideration of Input from Entities Other than the Applicant

Section 16-115(d) provides that the Commission shall grant an ARES application for a certificate of service authority if it makes the findings set forth in subsections (d)(1) through (d)(8) "based on the verified application and such other information as the applicant may submit." To this point, the Commission has accepted a construction of this language that precludes it from considering any information or argument from any entity other than an applicant, at least until after the Commission has entered an order either granting or denying the application.

The Commission is concerned that this may not be a correct construction of the language cited. Such a construction has the effect of precluding any input as to the merits of an application until the Commission has already acted on it. Thus, if a party had evidence tending to refute any of the showings required of an applicant in Section 16-115(d)(1) through (d)(8), or otherwise material to the Commission's consideration of an applicant's fitness for a certificate under those provisions, the Commission's construction of the language at the beginning of subsection (d) has served as an absolute bar to the consideration of any such facts other than in post-order procedures. In the instant case, and in terms of its finding that WPS met the requirements of Section 16-115(d)(5), the Commission bound itself to consider only the assumptions and scenarios developed by WPS as a part of the Application, as supplemented by the WPS Response to the Hearing Examiner's request for additional information.

Upon reflection, the Commission believes that in considering whether to take an action as significant as granting an application for a certificate of service authority to an ARES, it is inappropriate to read the statute as forbidding it to consider information other than that provided by the applicant. We believe there is a better construction of Section 16-115(d), which we hereby adopt, based on two premises. First, there is no

direct limit on intervention in Section 16-115, as contrasted with Section 16-111(g) of the Act, which was created as part of the same Act of the General Assembly (P.A. 90-561, effective December 16, 1997). In the latter Section, intervention "shall be limited to parties with a direct interest in the transaction which is the subject of the hearing and any statutory consumer protection agency as defined in subsection (d) of Section 9-102.1." Thus, where the General Assembly intended to narrow participation in types of proceedings created by Public Act 90-561, it expressly did so.

A second premise supporting the consideration of information from other sources is a plain reading of the language itself. The law simply does not prohibit the Commission from entertaining evidence or argument from parties other than the applicant. It does, however, require the Commission to base findings supporting a grant of certification on the verified application and such other evidence as the applicant may submit. It thus requires the applicant itself to support its own application, and precludes third parties from assisting an applicant that is unable to establish that it meets the statutory standards for certification. Such a construction is further supported by the notion that the General Assembly might well wish to exclude from certification an applicant that cannot, without third party assistance, make the required showings.

Provisions Governing Reopening

Section 10-113 of the Act provides in part as follows:

Anything in this Act to the contrary notwithstanding, the Commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any rule, regulation, order or decision made by it. Any order rescinding, altering or amending a prior rule, regulation, order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original rules, regulations, orders or decisions.

[220 ILCS 5/10-113]

Section 200.900 of the Commission's Rules of Practice, which governs the reopening of proceedings on motion of the Commission, reads thus:

After issuance of an order by the Commission, the Commission may, on its own motion, reopen any proceeding when it has reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires, such reopening. No party may petition the Commission to reopen on its own motion until after the time to petition for rehearing has expired.

[83 Ill. Adm. Code 200.900]

Commission Conclusions, Findings, and Ordering Paragraphs

For the reasons set forth above, the Commission is concerned that it may have erred in several respects in construing Section 16-115(d) for purposes of this proceeding, and that these erroneous constructions may have precluded it from a full consideration of the issues presented by the WPS Application. The Commission thus determines that the public interest requires it to reopen Docket No. 00-0199 to consider and determine, on an expedited basis, whether it should rescind, alter or amend the Order it entered in this proceeding on April 18, 2000. The scope of the reopening shall be limited to further consideration of whether WPS meets the standards set forth in Section 16-115(d)(5) of the Act.

In order to provide for a fuller factual consideration of these issues, the Commission directs its Staff to prepare a Report, supported by affidavit, after reviewing the showings contained in WPS's Application and Response, in which it states whether there are any other sets of assumptions (and if so, what those assumptions are) which would assist the Commission in determining whether either of WPS's retail affiliates serves a defined geographic area to which electric power and energy can be physically and economically delivered by the four electric utilities in whose service areas WPS sought to provide ARES service. In light of the discussion above, Staff should not limit itself to considering the sale of electricity from generating resources owned or controlled by these four electric utilities, but should consider other sources of electric power and energy available to them, subject to final Commission resolution of the proper construction of Section 16-115(d)(5) as it relates to this issue.

To the extent facts or circumstances in addition to those resulting from the review required above are relevant to a Commission determination of the issues in this reopened proceeding, Staff should include those in its Report, which shall be submitted to the Commission, with copies to the Hearing Examiner and parties to Docket No. 00-0199, no later than 12:00 noon on March 23, 2001. A hearing is to be set in this matter at a time and place determined by the hearing examiner.

The Commission, being fully advised in the premises, is of the opinion and finds as follows:

- (1) that it has jurisdiction over the subject matter of this proceeding and the parties hereto;
- (2) the recitals set forth in the prefatory portion of this order are hereby adopted as findings of fact;
- (3) the Commission is concerned that it may have erred in several respects in construing Section 16-115(d) for purposes of this proceeding, and that

these erroneous constructions may have precluded it from a full consideration of the issues presented by the WPS Application;

- (4) the public interest requires the Commission to reopen Docket No. 00-0199 to consider and determine, on an expedited basis, whether it should rescind, alter or amend the Order it entered in this proceeding on April 18, 2000, with the scope of the reopening limited to further consideration of whether WPS meets the standards set forth in Section 16-115(d)(5) of the Act; and
- (5) the Commission should direct its Staff to prepare and file the Report described in the prefatory portion of this Order.

IT IS THEREFORE ORDERED that the Illinois Commerce Commission hereby reopens Docket No. 00-0199 to consider and determine, on an expedited basis, whether it should rescind, alter or amend the Order it entered in this proceeding on April 18, 2000, with the scope of the reopening limited to further consideration of whether WPS meets the standards set forth in Section 16-115(d)(5) of the Act.

IT IS FURTHER ORDERED that the Commission directs its Staff to prepare and file the Report described in the prefatory portion of this Order.

IT IS FURTHER ORDERED that this Order is not final; it is not subject to the Administrative Review Law.

IT IS FURTHER ORDERED that a copy of this Order be served on each of the parties to Docket No. 00-0199.

By order of the Commission this 16th day of March, 2001.

Chairman

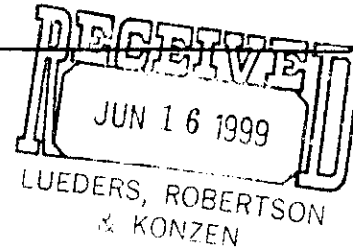
Ex. E to CILCO's Objection to IBEW's Petition for Interlocutory Review

STATE OF ILLINOIS



ILLINOIS COMMERCE COMMISSION

June 14, 1999



Illinois Commerce Commission
On Its Own Motion

99-0282

Proceeding pursuant to Section 16-111(g) of
the Public Utilities Act concerning proposed
sale of fossil fuel fired generating plants.

NOTICE OF HEARING EXAMINERS' RULING

TO ALL PARTIES OF INTEREST:

Notice is hereby given of the attached Hearing Examiners' Ruling in the above captioned case.

Sincerely

A handwritten signature in cursive script that reads "Donna M. Caton".

Donna M. Caton
Chief Clerk

da
Hearing Examiners: Mr. Gilbert & Mr. Riley

cc: Mr. Larson - Engineering

HEARING EXAMINERS' RULING

CUB

CUB asserts that it has "the legal authority to intervene" in these dockets. ComEd acknowledges CUB's status as a "statutory consumer protection agency" within the meaning of Section 9-102.1 of the Public Utilities Act ("Act") and does not oppose intervention predicated on that status. ComEd does oppose CUB's intervention on other asserted grounds and recommends that CUB "file, or be directed to file" an intervention petition based solely on CUB's status as a consumer protection agency.

CUB's petition to intervene is granted, based on its status under Section 9-102.1. Accordingly, there is no need for additional filings or rulings regarding CUB's intervention in these proceedings.

ATTORNEY GENERAL

The Attorney General asserts various grounds in support of its petition to intervene. ComEd acknowledges that the Attorney General is a "statutory consumer protection agency" within the meaning of Section 9-102.1 and does not oppose intervention on that basis. ComEd disputes the Attorney General's other grounds for intervention and recommends that the Attorney General "file, or be directed to file" an intervention petition based solely on the Attorney General's status as a consumer protection agency.

The Attorney General's petition to intervene is granted, based on its status under Section 9-102.1. Accordingly, there is no need for additional filings or rulings regarding the Attorney General's intervention in these proceedings.

LOCAL 15, IBEW

Local 15, IBEW asserts a "vital interest" and "legal authority" to intervene here. ComEd states that it will not dispute whether Local 15, IBEW has a direct interest in the subject transaction. However, ComEd disagrees with Local 15, IBEW's asserted bases for intervention and recommends that Local 15, IBEW "file, or be directed to file" an intervention petition explicitly and solely alleging a direct interest.

Subsections (c) and (d) of Section 16-128 of the Act imposes certain requirements on electric utilities in conjunction with sales of generating stations during the transition period. These requirements expressly pertain to non-supervisory employees at the subject generating stations. Pursuant to a Collective Bargaining Agreement, Local 15, IBEW is the bargaining representative for certain employees at the generating stations involved in these proceedings. Consequently, Local 15, IBEW has the requisite direct interest in the subject transaction.

Ex. E to CILCO's Objection to IBEW's Petition for Interlocutory Review

Local 15, IBEW's petition to intervene is granted based on its direct interest. There is no need for additional filings or rulings regarding Local 15, IBEW's intervention in these proceedings.

STATE'S ATTORNEY OF COOK COUNTY

The State's Attorney asserts various grounds for intervention, including that it has rights and duties "analogous to or coincident with those of the Attorney General." Consequently, the State's Attorney avers that its right to intervene parallels the Attorney General's. The State's Attorney also argues that Section 16-111(g) cannot be read to deprive or transfer the rights or duties of representation conferred upon State's Attorneys by the Illinois Constitution.

ComEd responds that Section 16-111(g) authorizes intervention only by the entities expressly identified in that section. ComEd contends that it is "precisely because" of the overlapping functions of the State's Attorney and Attorney General that the Legislature deemed intervention by the former to be "unnecessary."

The State's Attorney's petition to intervene is granted on two related grounds. First, cases cited by the State's Attorney do characterize that office as having rights and duties analogous to or coincident with the Attorney General. Kuntzman v. Nagano, 389 Ill. 231, 59 N.E.2d 96 (1945); People ex rel. Thompson v. Anderson, 119 Ill.App.3d 932, 157 N.E.2d 489 (1983). Second, the State's Attorney is a constitutional officer. As such, the Legislature cannot deprive that office of its rights and duties with respect to commencing proceedings on behalf of the County. Accordingly, the Hearing Examiners will not construe Section 16-111(g) as an attempt to diminish the State's Attorney's powers.

Additionally, there is no inherent reason why the overlap and coincidence of the rights and duties of, respectively, the State's Attorney and the Attorney General would render either party unnecessary to proceedings under Section 16-111(g). Parties with parallel interests routinely participate in the same administrative proceedings. Therefore, we reject ComEd's contention that overlapping interests would provide a rationale for an exclusive grant of authority to the Attorney General.

I&M RAILROAD

The I&M Railroad avers that it intervenes in this proceeding in order to attach certain conditions to any approval of the subject transaction. Specifically, the I&M Railroad wants the rights and obligations contained in a service agreement with ComEd to be transferred to the buyer of the fossil fuel plants involved here. The railroad states that it "does not seek to prevent the proposed sale."

ComEd replies that the railroad does not have a direct interest in the subject transaction, that it raises issues beyond the scope of these proceedings and that it

requests relief that the Commission lacks jurisdiction to provide. ComEd also points out that the contract issue the railroad seeks to pursue here is already in litigation in the circuit courts. ComEd places emphasis on the I&M Railroad's own acknowledgement that a judicial order concerning the contract issues in those ongoing circuit court proceedings will "take precedence over any order" from this Commission.

ComEd is correct that the issues the I&M Railroad would address are beyond the scope of these proceedings. The contract transfer provision that the railroad wants to engraft on the subject transaction is unrelated to the issues the Commission is empowered to consider here. The railroad does not allege, much less establish, any connection between, on the one hand, ComEd's ability to furnish safe and reliable service and to seek a rate increase, and, on the other hand, the transfer of the coal transport contract. Moreover, as the railroad itself states, an order from this Commission with respect to contract rights would be subordinate to an order from the circuit court, the appropriate forum for the railroad's claim. The I&M Railroad petition is denied.

IIEC

In support of their petition, the IIEC assert that they will be affected by ComEd's ability to meet its service obligations in a safe and reliable manner. The IIEC also maintain that rates they pay, and any refunds they might receive, will be substantially affected by ComEd's rate of return on common equity. They further argue that their interests as large industrial consumers will not be adequately represented by CUB and the Attorney General, who focus their efforts on, respectively, residential and statewide customers. Accordingly, the IIEC contend, conducting these proceedings without participation by large industrial consumers would deprive their customer class of due process. Also, the IIEC claim that the direct interest requirement should not be construed to exclude all but the parties to the subject transaction.

ComEd responds that the IIEC's interests go to the "possible consequences" of the subject transaction, not to its consummation. Such interests, ComEd argues, are similar to "those sometimes alleged to demonstrate satisfaction of the general standards for intervention in other Commission proceedings, standards which the General Assembly has rejected for purposes of Section 16-111(g) proceedings." ComEd avers that by granting the IIEC petition, the Commission will invalidate Section 16-111(g), which ComEd believes is intended to set the bar to intervention higher than in other Commission proceedings.

The Hearing Examiners agree with the IIEC - and with the I&M Railroad, which advances the same argument - that intervention in Section 16-111(g) proceedings is not limited to parties to the subject transaction. Such intervention would be meaningless, since the parties to the transaction could not reasonably be expected to oppose it. The Examiners agree with ComEd, however, that the intervention standard in Section 16-111(g) proceedings is more demanding than in other Commission

proceedings. The pertinent statutory language states that intervention is "limited to" the parties described; it is not a broad or general grant of the right to intervene.

The "direct interest" language in Section 16-111(g) has not previously been construed by a reviewing court and case law addressing the more general intervention provision in the Act, Section 10-110 (and predecessor statutes), is scanty. In Egyptian Electric Cooperative Association v. Illinois Commerce Commission, 33 Ill.2d 339, 211 N.E.2d 238 (1965), the court upheld the Commission's denial of intervention because appellant had presented an insufficient interest in a proceeding authorizing construction of a power line extension. The court stated: "Allegations that it was a consumer, or that it was a landowner across whose property the proposed line would have to go, fail to show the required interest in the proceedings, in the absence of facts showing that the proposed order would have a direct and adverse effect upon the appellant's rights." 211 N.E.2d at 240.

Since the attempted intervention in Egyptian Electric Cooperative did not meet the more permissive intervention standard that applies to most Commission proceedings, it follows that status as an electricity consumer is, by itself, insufficient for intervention under the stricter standard contained in Section 16-111(g). The Hearing Examiners conclude that "direct interest" intervention is accorded solely to parties whose legally cognizable rights and interests would be directly affected by consummation of the subject transaction. Local 15, IBEW is such an entity. Its rights under Section 16-128 will be directly affected by the sale of ComEd's fossil fuel plants.

In contrast, the IIEC do not have legally cognizable rights or interests that will be directly affected by consummation of the transaction here. Rather, the IIEC are energy consumers with a general interest in safe and reliable service at affordable rates. Such interest is substantial, appropriate and sufficient for intervention in most proceedings before this Commission. It is also an interest that the IIEC hold in common with all ComEd ratepayers and, in the matter of safety, with all Illinois residents. In a proceeding under Section 16-111(g), representation of this general interest in safe, reliable and affordable service is "limited to" the statutory consumer protection agencies and Commission Staff.

Since the IIEC are not statutory consumer protection agencies, and since they have no legally cognizable interest that will be directly affected by consummation of the plant sale, their petition to intervene is denied.

Gordon L. Goodman

Mr. Goodman, a retired research scientist at Argonne National Laboratory, petitions to intervene as an individual ratepayer concerned about safe and reliable fossil plant operations at reasonable rates. He emphasizes his expertise in issues associated with environmental air quality and he stresses the importance of attaching pollution control requirements to the subject transaction. Mr. Goodman buttresses his

Ex. E to CILCO's Objection to IBEW's Petition for Interlocutory Review

petition with supporting letters from the Villages of Downers Grove and Hinsdale, Illinois, and the City of Countryside, Illinois.

ComEd's reply to Mr. Goodman's petition is much like its response to the IIEC. ComEd adds that the Commission lacks jurisdiction to entertain Mr. Goodman's environmental issues. ComEd also points out that the environmental requirements currently imposed on its fossil fuel plants will remain in place after the subject transaction.

Mr. Goodman's petition to intervene is denied for the same reasons that underpin the denial of the IIEC's petition. His interests are public interests, common to all residents in ComEd's service territory. Intervention to advance those issues is "limited to" the statutory consumer protection agencies. Mr. Goodman does not allege legally cognizable rights or interests that will be directly affected by the fossil plant transaction.

The Hearing Examiners commend Mr. Goodman's involvement in these proceedings. As an individual citizen, he has represented his concerns ably and demonstrated a laudable interest in public affairs.

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ORIGINAL

COMMONWEALTH EDISON COMPANY

Petition to protect confidential and
proprietary information from public
disclosure submitted pursuant to Section
16-111(g) of the Public Utilities Act
as part of a Notice of Property Sale.

No. 99-0273

ILLINOIS COMMERCE COMMISSION,
On its own Motion,

v.

COMMONWEALTH EDISON COMPANY

Proceeding pursuant to Section 16-111(g)
of the Public Utilities Act concerning
proposed sale of fossil fuel fired gene-
rating plants.

No. 99-0282

PETITION FOR INTERLOCUTORY REVIEW OF HEARING EXAMINERS' RULING

COME NOW Abbott Laboratories, Inc., Motorola, Inc., and
Nabisco Brands, Inc., hereinafter referenced for convenience as the
Illinois Industrial Energy Consumers ("IIEC"), and pursuant to
Section 200.220 of the Rules of Procedure of the Illinois Commerce
Commission, Petition for Interlocutory Review of the June 14, 1999
ruling of the Hearing Examiners (HE) denying the IIEC Petition for
Leave to Intervene in the above described docket, and in support
thereof state:

FACTS

The IIEC industries heretofore filed a Petition for Leave to
Intervene in said docket on May 27, 1999.

On June 14, 1999, the Examiners (HE) entered their ruling to the effect that:

"Since the IIEC are not Statutory Consumer Protection Agencies, and since they have no legally cognizable interest that will be directly affected by consummation of the plant sale, their Petition to Intervene is denied."

Said ruling was based upon the HE's interpretation of the "intervention standard" applicable to Section 16-111(g) proceedings.

Said statutory provisions read as follows:

"In any proceeding conducted by the Commission pursuant to this paragraph (vi), intervention shall be limited to parties with a direct interest in the transaction which is the subject of the hearing and any statutory consumer protection agency as defined under subsection (d) of Section 9-102.1 ..." (Section 16-111(g)(3)(vi)).

On June 21, 1999, the IIEC industries gave notice of an amendment to their Petition for Leave to Intervene and filed an Amended Petition which alleged and repeated all of the allegations and statements contained in the original May 27, 1999 Petition for Leave to Intervene and inserted three new paragraphs which were underlined for identification. A copy of the Hearing Examiners' Order of June 14, 1999, together with a copy of the Amended Petition are attached hereto and identified respectively as Exhibit A and Exhibit B.

This docket is initiated and is to proceed under the provisions of Section 16-111(g)(vi) in relation to the proposed sale by Commonwealth Edison Company ("ComEd") of its fossil fueled

generating facilities to Edison Mission Energy. That provision of the PUA states, among other things, the utility is to provide:

1. "A description of how the electric utility will meet its service obligations under this Act in a safe and reliable manner"; and
2. "The electric utility's projected earned rate of return on common equity, calculated in accordance with subsection (d) of this Section for each year from the date of the notice through December 31, 2004, both with and without the proposed transaction." (Section 16-111(g)(3)(vi)) (220 ILCS 5/16-11(g)(3)(vi)).

ARGUMENTS IN SUPPORT OF IIEC RIGHT TO INTERVENE

The major conclusions relied upon by the Hearing Examiners (hereinafter referenced as "HE" for convenience) in denying IIEC's leave to intervene and the IIEC arguments in response thereto are as follows:

HE Ruling

"The 'direct interest' intervention is accorded solely to parties whose legal cognizable rights and interests would be directly affected by consummation of the subject transaction." (P. 4 of HE Ruling).

IIEC Response

From this premise, the HE moved to a final determination that the IIEC industries have no legally cognizable interest that will be directly affected by consummation of the plant sale and on that basis, the IIEC Petition for Leave to Intervene is denied. (P. 4

of HE Ruling). A succinct summation of the ruling is that the IIEC industries have no direct interest.

The HE acknowledge that the "direct interest" language in Section 16-111(g) on which they base the above statements has not previously been construed by a reviewing court. They, nevertheless, rely upon the citation of Egyptian Electric Cooperative Association v. Illinois Commerce Commission, 33 Ill.2d 339, 211 N.E.2d 238 (1965) as a representation of a Court's determination of sufficient interest to justify participation as party intervenors in a Commission proceeding. That case involved a Petition by Illinois Power Company requesting authority to construct an extension to its electric transmission line and therefore was a "convenience and necessity" case. The quote relied upon by the HE in the first full paragraph on Page 4 of the June 14, 1999 ruling of the HE is not applicable to this docket. The Court decision in the Egyptian Electric case turned upon the fact that the Co-op was a competitor of IP and sought to intervene in a convenience and necessity docket on the basis of that competition. The Court pointed out at Page 240 of the N.E.2d Report:

"Here there is no allegation that the rates or services to Appellant, as a consumer, would be substantially affected in any rights it would have as a landowner may be asserted in the condemnation suit. They are not affected simply by the conferring of a power of eminent domain upon a utility corporation."

The proceeding in Docket 99-0282 as established by the subject Section 16-111(g) is not a limited convenience and necessity case.

Intervention is specifically authorized for parties with a "direct interest in the transaction" and "statutory consumer protection agencies". Such language constitutes a direct recognition by the legislature that there is an interest of consumers of power furnished by the utility in the type of proceeding being conducted under 99-0282, and specifically in the issues which the Commission must treat in the process. Otherwise, there would have been no provision made in the legislation for the intervention of parties having a direct interest and the statutory consumer protection agencies, the only purpose of which would have to be to represent the interests of consumers in the issues directly related to and the subject of the proceeding.

The only issue involved here is whether or not IIEC has interests which qualify them to be recognized as intervenors in the process.

The HE recognize that it is possible to show a direct interest which would entitle parties other than a statutory consumer protection agency to intervene in the subject docket when they recognize that Local 15 I.B.E.W. is such an entity, even though it is not specifically identified in the provision applicable to intervenors in Section 16-111(g). Section 16-128 of the PUA, upon which the HE rely in the determination that I.B.E.W. will be directly affected by the sale of ComEd's fossil fuel plants, does not delegate to the I.B.E.W. a specific right to intervene in a Section 16-111(g) docket. Certainly, it does not show that the

I.B.E.W. Local has an interest that is more special or more direct than any other general consumer of electric power and energy furnished by Commonwealth Edison Company that will be an issue treated by the Commission.

IIEC industries are not objecting to a determination that I.B.E.W. has a direct interest, but it is not an interest that is specifically created by Statute. It is an interest that is recognized to be a "direct interest" by the application of the judgment of the Hearing Examiners on behalf of the Illinois Commission. It is the position of IIEC industries that this determination to allow that intervention as that of a party having "direct interest" should be applied as well in the matter of the IIEC Petition for Leave to Intervene based upon the direct interest that they have shown in the proceeding.

IIEC is entitled to recognition as being parties having legally cognizable rights and interests that would be directly affected by the proceedings in this case.

The provisions of Section 16-111(g) of the PUA require the requesting utility to furnish the following information:

- "A. A description of how the electric utility will meet its service obligations under this Act in a safe and reliable manner; and
- B. The electric utility's projected earned rate of return on common equity, calculated in accordance with subsection (d) of this section, for each year from the date of the notice through December 31, 2004, both with and without the proposed

transaction." (Section 16-111(g)(3)(vi).
(220 ILCS 5/16-111(g)(3)(vi)).

Based on such information the Commission is to determine whether or not it will prohibit the transaction. It is reasonable to conclude and IIEC urges the conclusion, that the "direct interest" provision in Section 16-111(g) is applicable to these specific issues, and any ComEd customer that has an interest in either of those issues should be entitled to intervene in the subject docket. IIEC contends that it has the sufficient interest in said issues to be entitled to intervene in the proceeding.

Under Section 16-111 of the Electric Service Customer Choice and Rate Relief Law of 1997 (the "Amendatory Act"), utilities were not to be allowed an increase or to have a decrease in rates during the mandatory transition period (Section 16-111(a)), except under special conditions measured and tested under the provisions of Subsection (d) of Section 16-111 and were to make refunds to customers during the mandatory transition period measured by the provisions set out in Subparagraph (e) of Section 16-111. Each of these measurements ride in some part on the earned rate of return on common equity and collectively they affect electric energy consumers such as the subject IIEC intervenors in relation to possible rate increases to be allowed to the utility or the determination of refunds that the utilities should make to ratepayers from any excess earnings that utility might experience in the transition period.

Rate reductions of 20% ordered by the Electric Customer Choice and Rate Relief Law of 1997, were applicable only to residential ratepayers. IIEC industries did not receive a rate reduction. Therefore, they have a special and direct interest in the utility's qualification to apply for a rate increase (subsection (d)). They have an even more direct interest, that is not held in common with all ComEd ratepayers, in the earnings on common equity that would affect the ordering of refunds by the utility during the transition period (subsection (e)) which would be of greater economic consequence for them than same would be for residential ratepayers.

IIEC industries have a direct and cognizable interest in how the utility will meet its service obligations in a safe and reliable manner by virtue of the fact that Motorola, Inc., and Nabisco Brands, Inc., of the IIEC intervention group, take service under ComEd's Real Time Pricing tariff.

In its order in Docket 98-0362 approving Commonwealth Edison's proposed real time pricing rate entitled HEP (Hourly Energy Pricing) and approving modifications to Rate RTP, (Real Time Pricing), the Commission noted that Commonwealth Edison witnesses had testified that "under Rate HEP, Hourly Energy Prices would be based on ComEd's incremental cost of serving its net generation requirement, using the same energy management system used by ComEd to evaluate essential business decisions on a daily basis. The Commission noted that this system utilizes information pertaining to ComEd's generation assets and its net generation requirement.

The RTP and Rate HEP used the same hourly energy pricing methodology. Rate RTP depends directly on the incremental cost of power and whether Commonwealth Edison is a net seller or net buyer of electricity. Edison's proposal to sell its fossil units could affect Edison's status as a net seller or net buyer of electricity. To the extent that status is altered, it could have a direct impact on the price RTP customers pay for their electricity. IIEC companies, Motorola and Nabisco, being RTP customers, are directly affected by this provision. As RTP customers, they have a direct interest in this proceeding which interest is different from that of the general public since the RTP or HEP rate is applicable only to those who are industrial (non-residential) customers with a probable highest thirty-minute demand during typical year of operation of at least 10,000 kilowatts, and the price of their electricity will be directly or could be directly affected by the sale of ComEd's fossil fuel plants and the effect of same on capacity.

The HE concluded that the interest of IIEC was one that was held in common with all ComEd ratepayers and in the matter of safety with all Illinois residents. While it is true that all ratepayers, including the IIEC industries, hold a common interest in the matter of safety with all Illinois residents and are interested in safe and reliable service, that common interest does not void or negate the addition of a special or "direct" interest possessed by IIEC industries in the effect on their real time

pricing charges made by the capacity status application in the fixing of real time pricing. The real time pricing interest is not an interest that is common with all ComEd ratepayers. Likewise, the interest of IIEC in the electric utility's projected earned rate of return on common equity, calculated in accordance with subsection (e) of Section 16-111 for each year from the date of the notice to December 31, 2004, both with and without the proposed transaction is one of peculiar special interest to IIEC industries inasmuch as they have a direct interest in the status of the utility in regard to eligibility to apply for a rate increase during the mandatory transition period described in the new electric dereg Act of 1997 and in the determination of earnings of the utility during said period which would compel them to make refunds of excess earnings to ratepayers. Each of these determinations are made by the application of a formula in which the earnings on common equity is a primary element.

As pointed out heretofore, industry did not receive any part of the 15% to 20% rate decrease granted by the Electric Service Customer Choice and Rate Relief Law of 1997. That decrease went to residential customers only. IIEC industries would have a keener and separate interest in the ability of the utility to apply for a rate increase and in the determination and obtaining of rate refunds.

These special and unique interests of IIEC constitute a qualification for them to be determined to have a direct interest

which measures special qualification under the intervention standards of Section 16-11(g) of the PUA in regard to their Petition for Leave to Intervene in this docket. The interests of IIEC so shown to be in the issues to be considered by the Commission are not interests which are held in common with all ratepayers.

HE Ruling

"In a proceeding under Section 16-111(g), representation of this general interest in safe reliable and affordable service is 'limited to' the Statutory Consumer Protection Agencies and Commission Staff. (P.4 of Ruling)

The HE made this conclusion applicable to IIEC when it was determined that the interest held by IIEC was one held in common with all ComEd ratepayers and in the matter of safety, with all Illinois residents. This is a position which fails to recognize the specific interest IIEC has in the issues to be considered and ruled upon in the Docket 99-0282 proceeding. The unique and directly personalized interest of IIEC in the issues to be considered, namely, effect on capacity and effect on earnings on common equity, have been set out heretofore to establish a showing of their "direct interest" in such issues. The ruling of the HE gives no consideration to the personalized interest of IIEC in such issues. As a result of this absence of consideration of the special interests of IIEC, the HE conclude that the IIEC representation in regard to a general interest in "safe, reliable and

affordable service" is limited to the statutory consumer protection agencies and the Commission Staff.

The statute recognizes that there is an interest of someone or something to be defended and protected in the type of proceeding that is involved in Docket 99-0282. Otherwise, it would not have provided for the blanket intervention of a statutory consumer protection agency. At page 3 of the HE's ruling in the first paragraph in treatment of the IIEC request for intervention, it is recognized that IIEC has argued that large industrial consumers will not be adequately represented by CUB and the Attorney General, who focus their efforts on residential and statewide customers. That paragraph also recognizes that IIEC has contended that "conducting these proceedings without participation by large industrial customers would deprive them of due process".

Under this HE ruling, IIEC is denied the right to intervene and protect its own special interests inasmuch as they are to be represented in this docket by the statutory consumer protection agencies, namely, the Citizens Utility Board (CUB) and the Attorney General (AG) based upon the statutory recognition of same in Section 9-102.1 and by the Illinois Commerce Commission Staff.

An argument made by ComEd in its opposition to the granting of IIEC's Petition for Leave to Intervene in this docket was that the issues raised by IIEC will be represented by the suggested "statutory consumer protection agencies" and the "Attorney General of the State of Illinois". The net effect of that argument was to

maintain that IIEC intervenors have no direct interest, but in case they do have such an interest, they can be represented by CUB or the Attorney General (AG). In their response to that argument, IIEC industries pointed out that Section 5 of the Citizens Utility Board Act (220 ILCS 5/15-701) specifically enumerates the powers and duties which the Citizens Utility Board (CUB) is charged to execute. Among the duties is the obligation to:

"Represent and protect the interest of the residential utility consumers of this State. All actions by the corporation under this Act shall be directed toward such duty; provided that the corporation may also give due consideration to the interests of business in the State. (emphasis added)

IIEC does not cast any aspersions upon the appropriate and intelligent exercise by CUB of its imposed duties, but the representation of CUB in matters before the Illinois Commerce Commission and in the legislature of the State of Illinois has been primarily and principally that of the interests of residential utility consumers. CUB has not, and does not, purport to represent the interests of the type of industrial operation conducted by the IIEC intervenors in this docket.

Not in criticism, but as a fact pertinent to CUB's assumed representation of the interests of the IIEC intervenors in this process, certain political facts should be considered. CUB was the predominant agency motivator for the 15% to 20% rate decreases granted to residential customers (not industrial customers) by the provisions of the Electric Service Customer Choice and Rate Relief

Law of 1997. In Senate Bill 24 (SB 24), now before the Governor of Illinois for signature, CUB is the beneficiary of a provision represented by a new Section 16-111.1(a) which provides, "An electric utility which has sold or transferred generating facilities in a transaction to which subsection (k) of Section 16-111 applies is authorized to establish a community trust or foundation...". New Subsection (k) of Section 16-111 as amended by SB 24 identifies that utility - as a "...utility selling or transferring to a single buyer five or more generating plants located in this State with a total net dependable capacity of 5000 megawatts or more pursuant to Subsection (g) of this Section (Section 16-111) and has obtained a sale price or consideration that exceeds 200% of the book value of such plants..." (explanation added) - and specifies that such utility must submit a written commitment that such electric utility agrees to make certain specified expenditures over a six year period. Subparagraph (c)(2) of new Section 16-111.1 specifically provides that a contribution of \$1,000,000 should be made from such expenditure commitment to the Citizens Utility Board each year over a period of six calendar years.

The accomplishment of this legislation is a compliment to the capability of CUB in representing residential consumers. However, it is not an incentive or circumstance that indicates CUB is the appropriate agency to be assigned to represent large industrial electric consumers' interests before the Illinois Commerce Commission in this specific docket in which ComEd is the utility

seeking approval of a sale of assets under Section 16-111(g) of the PUA.

To deny IIEC industries the right to intervene and to designate CUB to represent them as their procedural alter-ego would be to deny IIEC their constitutional right of due process as guaranteed by the United States Constitution and the Constitution of the State of Illinois.

The creation of a consumer's utilities unit by Section 6.5, added to the Attorney General Act (15 ILCS 205/6.5) by the legislature in 1997, has as its purpose the creation of the ability of the Attorney General to afford "effective public representation ... to protect the rights and interests of the public in the provisions of all elements of electric service ...". The Attorney General has to support the universal public interest and cannot be expected to emphasize or devote the entire attention of his consumer utilities unit to the representation of interests that would be peculiar to large industrial electric consumers alone. To replace individual participation by said large industrial consumers with generalized representation by the Attorney General would also be a denial of IIEC's right to the exercise of their constitutional due process rights through personalized intervention in representation of their own interests.

IIEC industries have a "direct interest" in the subject transaction and the determination to be made therein that entitle them to be allowed to intervene to represent their direct interest.

To deny this right would constitute for them a deprivation of their constitutional right to due process.

CONCLUSION

As filed, this Petition for Interlocutory Review of the Hearing Examiners' Ruling basically contests the conclusion of the HE in that ruling that:

"...since the IIEC are not statutory consumer protection agencies and since they have no legally cognizable interests that will be directly affected by confirmation of the plant sale, their Petition to Intervene is denied."

In their filings related to their request for leave to intervene in this docket, they made verified allegations to the effect that:

Each of the industries petitioning to intervene are situate in the ComEd service territory; are served under the electric power and energy tariff services of that utility;

such service is affected by the capability of ComEd to meet its service obligations in a safe and reliable manner;

Petitioners are each subject to rates that are substantially affected by the rate of return a utility receives on its common equity and are affected by the Company's rights to increase its base rates during mandatory transition periods under the provisions of Section 16-111(d) of the Electric Service Customer Choice and Rate Relief Law of 1997 and to the determination of whether or not any refunds should be paid to ratepayers under the provisions of Section 16-111(e) of said Act.

The Verified Amended Petition for Leave to Intervene as filed by the IIEC industries points out that Motorola, Inc., and Nabisco

Brands, Inc., are each holders of real time pricing contracts with ComEd, which are rights that are distinguished from and not held in common with all ComEd ratepayers and which are affected by the capacity status of ComEd, and that they are not properly represented by the statutory consumer protection agencies as defined in subsection (d) of Sec. 9-102.1 of the PUA.

By virtue of these allegations, IIEC industries have demonstrated an interest which should entitle them to be granted leave to intervene in the subject docket.

The particularized direct interests of IIEC industries are not represented by the recognized statutory consumer protection agencies as defined in Subsection (d) of Section 9-102.1 of the Public Utilities Act (by CUB, by the AG) and to compel said industries to rely on such representation would constitute a denial of the constitutional guarantees of due process under the Constitution of the United States and of the State of Illinois.

The HE have recognized the interest of the I.B.E.W. and the State's Attorney of Cook County as being direct interests even though said parties are not described or named as parties having a right to intervene under the provisions of Section 16-111(g) of the PUA. This evidences the exercise of a right on the part of agents of the Commission to make an individual and personal determination as to whether or not parties seeking to intervene have an interest which is in the nature of a direct interest and entitlement to intervene. The I.B.E.W. local has not evidenced any more direct

interest in the transaction than has IIEC but it has been allowed to intervene.

IIEC industrial intervenors have a direct interest in the proceedings in this docket and the recognition of such direct interest resulting from the acceptance of their Petition for Intervention does not broaden the interpretation of the statutory "direct interest" provision inasmuch as it is based upon a direct interest in the particular subject matter of this proceeding. If there is any limitation imposed on the parties seeking intervention by the reference in Section 16-111(g) to "direct interest" of such parties, it could only reasonably be considered to be on those parties who are unable to show a direct interest in the issue of safe, reliable capacity and/or the earned rate of return on common equity of Commonwealth Edison in this instance.

To exclude Abbott Laboratories, Inc., Motorola, Inc., and Nabisco Brands, Inc., from participation in this docket, relative to issues related to:

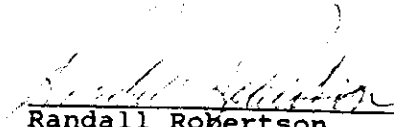
how the electric utility will meet its service obligations in a safe and reliable manner; and

the utility's projected earned rate of return on common equity, calculated in accordance with subsection (d) of Section 16-111 of the PUA,

would constitute a deprivation of their due process rights guaranteed by the Constitution of the United States of America and the Constitution of the State of Illinois.

WHEREFORE, IIEC Industries pray the Commission to grant interlocutory review of the Hearing Examiners' ruling of June 14, 1999 and in said process determine that said ruling was in error, reverse said ruling in whole and grant the said IIEC industries leave to intervene herein.

DATED this 24th day of June, 1999.



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